Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 95 of 2002.

1. Smt. Kalpana W/o Late Vijay Singh Dogra,
2. Ajay Dogra S/o Late Vijay Singh Dogra,
3. Km. Savita Dogra D/o Late Vijay Singh Dogra,
4. Smt. Basanti Devi W/o Late Chandan Singh,
   All R/o Village – Nandpur, P.O. Katgharia,
   Tehsil-Haldwani, District – Nainital.

……. Appellants/Claimants

Versus

(1) Sri Pooran Chandra Joshi S/o Sri Leeladhar Joshi,
R/o Village-Pooranpur, P.O. Guljarpur Chakahua,
P.S. Kaladhungi, District-Nainital.
(Owner of Truck No. URN 9417).

(2) The New India Assurance Co. Ltd. Haldwani,
through its Divisional Manager, Nainital Road,
Haldwani, District-Nainital

(3) The New India Assurance Co. Ltd. Haldwani,
through its Divisional Manager, Nainital Road,
Haldwani, District-Nainital
(Insurer of vehicle Jeep No.UP-01-3692).

……. Respondents/Opp.parties

Sri G.B.Pandey, learned counsel for the appellants,
Sri M.K.Goel, learned counsel for the Insurance Company/O.Ps.

Date: 25th Aug., 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S.Verma, J.

This appeal has been preferred by the appellant/claimants against the judgment and order dated 08.02.2002, passed by Motor Accident Claims Tribunal / Addl.District Judge, Haldwani (District-Nainital) in Motor Accident Claim Petition No. 111 of 2000, whereby the claim petition of the petitioners has been dismissed.

2- Brief facts giving rise to this appeal are that on 07.6.1999 at about 09.50 P.M. deceased Vijai Singh Dogra was coming from Nandpur to Haldwani through his vehicle No UP 01-3962. He himself driving the said vehicle cautiously and with moderate speed. When the said vehicle reached near Block Office, Haldwani it dashed with the vehicle Truck No. URN 9417 which was parked in the road violating the traffic rules. In this accident Vijai Singh Dogra sustained grievous injuries. He was taken to Base Hospital, Haldwani from where he has been referred to Bareilly for better treatment but he died during the treatment on 09.6.1999. The deceased was 32 years of age at the time of accident. He was earning Rs. 8,000/- per month by driving his taxi and also from the agriculture work. The claimants, who are dependents of the deceased, filed the claim petition for compensation amounting to Rs. 14,88,000/- before the Tribunal.

3- The Opp.parties contested the claim petition by filing their written statements before the Tribunal stating therein that the accident occurred due to rash and negligent driving of the deceased himself. The Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence of the parties dismissed the claim petition on the ground that the accident took place on account of the negligence of the deceased himself. This finding has been recorded on the evidence of the witnesses that the Truck No. URN 9417 was parked on the left side of the metallic road on a national high way and Jeep was coming from the back side of the truck. He was trying to overtake the parked truck, all of sudden a vehicle was seen coming from the front, therefore in order to save himself he dashed the parked truck No. URN 9417. So the truck driver could not be held responsible for the alleged accident.

4- The learned counsel for the appellants submitted that the parked Truck was loaded by logs of Eucalyptus trees and these logs were protruding out side the truck. There was no indicator light or any other indicator to indicate that truck is parked, traffic coming from the back side may be cautious. Therefore, it was complete negligence of the truck driver of truck No. URN 9417. He further submitted that Section 81 of the Motor Vehicles Act, 1939 clearly bars the parking of the motor vehicle on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to the other users of the road. He submitted that the Truck No. URN 9417 was parked on the metalled road though on the left side but without indicator which is a negligence in view of the provisions of Sec. 81 of the aforesaid Act. Therefore, it was total negligence of the driver of the Truck. The learned counsel for the appellants/petitioners relied on the judgment of the Punjab & Haryana High Court in the case **Pushpinder Kaur Sekhon versus Corporal Sharma and another,** reported in **1986 ACJ, 591**. We have perused the judgment passed by the Punjab & Haryana High Court in which it has clearly been held that such parking is in violation of Sec. 81 of the Motor Vehicle Act, 1939 and if accident occurs in these facts and circumstances it may be held that it was the negligence of the driver of the vehicle. Therefore, accordingly, we hold that the accident took place on account of negligence of the driver of vehicle Truck No. URN 9417 which was insured with the New India Assurance Company. The driver of the Jeep would be third party, which is covered under the policy of the insurance.

5- Now we comes to the quantum of compensation. The income of the deceased was alleged to be Rs. 6,000/-

per month and it has come in the cross-examination of the claimants that deceased used to give the maintenance of the family Rs. 4,000/- per month. The statement on oath, which has not been rebutted by the Opp. Party-Insurance Company, cannot be ignored. The age of the deceased was 33 years. On the basis of the aforesaid evidence of the claimants, we hold that the dependency loss to the claimants is Rs. 4,000X12=Rs. 48,000/- per annum. The multiplier of **'17'** in this case is to be applied, according to the second schedule appended to Sec. 163-A of the Motor Vehicles Act, 1988. Therefore, the amount of compensation, which the claimants/appellants are entitled to get from the Opp.party No.2- New India Insurance Company Ltd. comes to Rs.48,000X17=Rs.8,16,00/-. The New India Insurance Company shall also be held liable to pay interest at the rate of 6% per annum.

6- Accordingly, the appeal is allowed. The impugned order dated 08.2.2002 is set aside. The claim petition is decreed for Rs.8,16,000/- (Rupees eight lac sixteen thousand) only against the Opp.party No.2-New India Insurance Company Ltd. alongwith interest at the rate of 6% (six per cent) per annum from the date of filing of the claim petition till the date of actual payment.

(B.S.Verma,J.) **(P.C. Verma,J.)**

P. Singh